

THIS DISPOSITION
IS NOT CITABLE AS
PRECEDENT OF
THE TTAB

Mailed: July 31, 2003

Paper No. 25

CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Eagle OPG, Inc.¹

Serial No. 75/535,688

Frank B. Janoski and Thad N. leach of Lewis, Rice & Fingersh for Eagle OPG, Inc.

Richard S. Donnell, Trademark Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Walters, Bucher and Bottorff, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Eagle OPG, Inc has filed an application to register the mark GENERATIONS on the Principal Register for "memory book and scrap book materials, namely, memory

¹ The application was originally filed by American Trading and Production Corporation. During the pendency of the application, the mark and application were assigned by the original applicant to Calvert Holdings, LLC; and then by Calvert Holdings, LLC to Eagle OPG, Inc. Both assignments are recorded in the USPTO assignment database.

albums, photograph albums, scrapbook albums, binders, leaf binders, envelopes, filler paper for albums and binders, plastic pages for holding sheets of paper, plastic pages for holding photographs, archival storage pages, and paper expanding files."²

The Trademark Examining Attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark GENERATION, previously registered for "organizers for stationery use; daily and yearly planners; stationery type portfolios; business card holders; telephone indexes; stationery desk sets; mini-stationery kits, comprising, stapler, staples, rulers, scissors, composition books; and writing instruments,"³ that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

² Serial No. 75/535,688, in International Class 16, filed August 12, 1998, based on an allegation of a bona fide intention to use the mark in commerce.

³ Registration No. 2,146,310 issued March 24, 1998, to Generation Marketing Group Inc., in International Class 16.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that the marks are nearly identical and that the "S" at the end of applicant's mark does not distinguish its mark from the registered mark. With respect to the goods, the Examining Attorney submitted with his brief a dictionary definition of "stationery,"⁴ of which we take judicial notice. He contends that applicant's and registrant's goods all comprise "stationery" and are "reasonably related."

The Examining Attorney submitted 29 third-party registrations, which he contends show the same marks registered for "stationery-type goods such as those provided by the registrant and the applicant." The third-party registrations show the same marks registered for a wide variety of stationery items, including ring binders, binders, portfolios, organizers, photograph albums, folders, art supplies, and envelopes.

Additionally, the Examining Attorney contends that the trade channels and class of purchasers of the goods identified in the application and the cited registration are the same, noting that the respective identifications of goods are not limited as to channels of trade or classes of purchasers and, thus, can be presumed to travel in all of the normal trade channels for stationery and be bought by the usual purchasers of stationery.

Applicant concedes that the differences between the involved marks are "slight," but contends that its goods are quite different from those in the cited registration. Applicant notes that "[registrant's] ordinary stationery products are [not] similar to the scrapbooking items and other materials related to the long term preservation of

⁴ "**stationery**, noun, 1. Writing paper and envelopes. 2. Writing materials and office supplies." *The American Heritage Dictionary of the English Language*, 3rd ed, 1992.

memorabilia (which are the goods now described by applicant)." Applicant states that it "focuses on goods assembled with acid-free paper and clear plastic, envelope-style pages for holding keepsakes free of any destructive attachment mechanism"; but that "[r]egistrant's description of goods is not particular to an industry but is of goods in general office use"; that registrant's staplers, staples and adhesive tape "are clearly destructive of the items they bind in a manner that is contrary to the function and purpose of applicant's goods"; that registrant's other goods, including "daily and yearly planners (useful only for a day or several months), business card holders, ... are also clearly designed and used in a general or personal setting."

Applicant argues that the class of purchasers for its goods is different from that for registrant's goods and that any overlap is merely coincidental. Applicant states that its purchasers "desire to preserve memorabilia [and] a particular presentation for their keepsakes"; and, thus, that purchasers of its goods are discriminating, careful purchasers. Applicant also concludes that the trade channels for the respective goods are different, stating that registrant's goods "are

miscellaneous office supplies to be used in connection with general business activities [and that] [t]his type of goods is typically sold at office supply stores and related outlets," whereas applicant's goods "are sold in arts, crafts, and hobby stores."

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *See In re*

Serial No. 75/535,688

National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

We agree with the Examining Attorney that the marks are substantially the same, with the "S" at the end of applicant's mark insufficient to distinguish the marks. Applicant's mark is merely the plural of registrant's mark and would not be pronounced significantly differently, nor would it have a different connotation. The commercial impressions of the two marks are substantially similar.

Turning to consider the goods involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). Further, it is a general rule that goods or services need not be identical or even competitive in order to support a

finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

The broad definition of "stationery" in the record would clearly encompass some, if not all, of both applicant's and registrant's goods. The fact that these goods could be considered under the general category of "stationery" does not, by itself, lead us to conclude that the goods are sufficiently related that confusion is likely. However, in this case, the record shows numerous third-party registrations for the same marks for stationery products that include both applicant's goods and registrant's goods. While this is not evidence of use of these marks on these goods, third-party registrations are valid evidence of the fact that parties have registered the same marks for these goods and, as

such, suggest that these goods could emanate from a single source.

Further, applicant's goods include broadly identified stationery items, such as envelopes, binders, and paper expanding files, which are likely to be available at stationery and office supply stores; and registrant's organizers could encompass expanding files and various types of albums to organize photos and memorabilia.

Finally, we find applicant's arguments about its limited channels of trade and class of purchasers to be unpersuasive. There is no evidence that photograph albums and scrap books are not items purchased by the general public. The evidence supports our finding that applicant's and registrant's goods are closely related items of stationery.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, GENERATIONS, and registrant's mark, GENERATION, their contemporaneous use on the related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The refusal under Section 2(d) of the Act is affirmed.